

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAZARUS DANIEL MARQUEZ,

Petitioner,

v.

JEFF LYNCH,

Respondent.

No. 1:22-cv-00896-KES-EPG (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
RESPONDENT'S MOTION TO DISMISS,
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS, DIRECTING CLERK OF
COURT TO CLOSE CASE, AND
DECLINING TO ISSUE A CERTIFICATE OF
APPEALABILITY

(Docs. 10, 25)

Petitioner Lazarus Daniel Marquez is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 11, 2023, the assigned magistrate judge issued findings and recommendations that recommended granting Respondent's motion to dismiss and dismissing the petition as untimely. Doc. 25. On September 8, 2023, Petitioner filed timely objections. Doc. 26.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of the case. Having carefully reviewed the file, including Petitioner's objections, the Court holds the findings and recommendations to be supported by the record and proper analysis.

Having found that petitioner is not entitled to habeas relief, the court now turns to whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no

1 absolute entitlement to appeal a district court's denial of his petition, and an appeal is allowed
2 only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C. §
3 2253. Where, as here, the court denies habeas relief on procedural grounds without reaching the
4 underlying constitutional claims, the court should issue a certificate of appealability "if jurists of
5 reason would find it debatable whether the petition states a valid claim of the denial of a
6 constitutional right *and* that jurists of reason would find it debatable whether the district court was
7 correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added).
8 "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of
9 the case, a reasonable jurist could not conclude either that the district court erred in dismissing the
10 petition or that the petitioner should be allowed to proceed further." *Id.*

11 In the present case, reasonable jurists would not find the court's determination that
12 petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of
13 encouragement to proceed further. Therefore, the court declines to issue a certificate of
14 appealability.

15 Accordingly:

- 16 1. The findings and recommendations issued on August 11, 2023, Doc. 25, are
17 ADOPTED in full;
- 18 2. Respondent's motion to dismiss, Doc. 10, is GRANTED;
- 19 3. The petition for writ of habeas corpus is DISMISSED;
- 20 4. The Clerk of Court is directed to close the case; and
- 21 5. The court declines to issue a certificate of appealability.

22
23
24 IT IS SO ORDERED.

25 Dated: June 27, 2024

26
27
28

UNITED STATES DISTRICT JUDGE